

AMENDED IN SENATE JUNE 19, 2012

AMENDED IN SENATE MARCH 22, 2012

AMENDED IN SENATE MARCH 21, 2012

AMENDED IN ASSEMBLY APRIL 25, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1409

Introduced by Assembly Member V. Manuel Pérez

March 10, 2011

An act to amend Sections 11346.2 and 12098.3 of, and to add Section 11346.23 to, the Government Code, relating to regulations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1409, as amended, V. Manuel Pérez. Regulations: small businesses.

~~(1) Existing law creates the Milton Marks “Little Hoover” Commission on California State Government Organization and Economy to assist the Legislature and the Governor in promoting economy, efficiency, and improved service in the transaction of public business in state government.~~

~~This bill would make legislative findings and declarations relating to regulatory policy based upon a study by the commission.~~

~~(2)~~

~~(1) The Administrative Procedure Act generally sets forth the requirements for the adoption, publication, review, and implementation of regulations by state agencies. The act requires every state agency subject to the act to submit, with the notice of the proposed adoption, amendment, or repeal of a regulation, an initial statement of reasons~~

for proposing the adoption, amendment, or repeal of a regulation, which is required to include, among other things, a description of any reasonable alternatives that would lessen any adverse impact on small business and the agency's reasons for rejecting those reasonable alternatives.

This bill would clarify the nature of the reasonable alternatives an agency is required to include in its initial statement and would require an agency to include any reasonable alternative submitted by the public or the Office of the Small Business Advocate in the statement. This bill would require the initial statement to include an assessment of whether there are similar or related *state regulations that have been adopted by another state regulatory entity* and require ~~the~~ *an* agency to *determine whether there are opportunities to coordinate with that entity and harmonize compliance activities* to reduce regulatory burdens on small businesses, as provided.

(3)

(2) Existing law requires various topics to be listed in the State Administrative Manual.

This bill would require the Department of General Services to provide in the State Administrative Manual guidance on procedures that facilitate the review of existing regulations and the implementation of new and modified regulations, as specified.

(4)

(3) Existing law creates the Office of Small Business Advocate to represent the views and interests of small businesses before state agencies.

This bill would clarify the nature of this function by requiring the advocate to comment on, and gather input from small businesses on, reasonable alternatives to proposed and existing regulations.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. (a) The Legislature finds and declares all of the~~
2 ~~following:~~

3 ~~(1) Historically, California's regulatory process has produced~~
4 ~~meaningful benefits for Californians in consumer safety, food~~
5 ~~security, worker protection, energy efficiency, and air and water~~
6 ~~quality. Unfortunately, over time, California's approach to~~

1 developing regulations has, according to the Milton Marks “Little
2 Hoover” Commission on California State Government Organization
3 and Economy, resulted in an uneven regulatory environment for
4 businesses that lacks coordination and the kind of thorough
5 oversight that ensures efficiency and accountability.

6 (2) The commission found, in October 2011, that the process
7 the state uses to develop regulations varies widely, particularly in
8 the use of economic analysis to determine what burden a proposed
9 regulation will have on an affected person or business. Further,
10 the commission found that the state has been reluctant to adopt
11 and use analytical tools employed in other states and at the federal
12 level. The state’s current process has produced a regulatory
13 approach that can focus intensely on solving problems in a single
14 arena without taking into consideration the broader context or
15 consequences of the solution.

16 (3) The commission reported that it found, among other things,
17 examples of where regulatory procedural shortcomings resulted
18 in failed rulemaking efforts, the potential imposition of costly
19 conditions that could force painful tradeoffs, or regulations
20 undermined by an economic analysis that did not account for
21 real-time changes in the economy. The commission further found
22 that the current system, intended to ensure that regulating agencies
23 choose the least burdensome alternative, failed to meet that
24 objective.

25 (4) The commission recommended, among other things, that
26 the state establish an Office of Economic and Regulatory Analysis
27 that would reestablish the regulatory analysis function which once
28 existed in the now-defunct Trade and Commerce Agency. In
29 reestablishing this function, the state can learn from the example
30 of the United States Office of Information and Regulatory Affairs,
31 located in the White House’s Office of Management and Budget.
32 The small cost associated with reestablishing this function would
33 be more than offset by reducing the costs of failed regulatory
34 processes, reducing lengthy methodological challenges, and
35 potentially improving confidence in the rulemaking process.

36 (b) The

37 *SECTION 1. The Legislature further finds and declares that*
38 *having a well-functioning economy that encourages innovation*
39 *and new business development is highly dependent on an effective*
40 *and efficient regulatory environment that addresses key public*

1 health, safety, and environmental conditions. ~~Wasteful government~~
2 *Government* practices that *unnecessarily* increase costs and result
3 in project delays can threaten the state's long-term economic
4 growth.

5 SEC. 2. Section 11346.2 of the Government Code, as amended
6 by Section 2 of Chapter 496 of the Statutes of 2011, is amended
7 to read:

8 11346.2. Every agency subject to this chapter shall prepare,
9 submit to the office with the notice of the proposed action as
10 described in Section 11346.5, and make available to the public
11 upon request, all of the following:

12 (a) A copy of the express terms of the proposed regulation.

13 (1) The agency shall draft the regulation in plain, straightforward
14 language, avoiding technical terms as much as possible, and using
15 a coherent and easily readable style. The agency shall draft the
16 regulation in plain English.

17 (2) The agency shall include a notation following the express
18 terms of each California Code of Regulations section, listing the
19 specific statutes or other provisions of law authorizing the adoption
20 of the regulation and listing the specific statutes or other provisions
21 of law being implemented, interpreted, or made specific by that
22 section in the California Code of Regulations.

23 (3) The agency shall use underline or italics to indicate additions
24 to, and strikeout to indicate deletions from, the California Code
25 of Regulations.

26 (b) An initial statement of reasons for proposing the adoption,
27 amendment, or repeal of a regulation. This statement of reasons
28 shall include, but not be limited to, all of the following:

29 (1) A statement of the specific purpose of each adoption,
30 amendment, or repeal, the problem the agency intends to address,
31 and the rationale for the determination by the agency that each
32 adoption, amendment, or repeal is reasonably necessary to carry
33 out the purpose and address the problem for which it is proposed.
34 The statement shall enumerate the benefits anticipated from the
35 regulatory action, including the benefits or goals provided in the
36 authorizing statute. The benefits may include, to the extent
37 applicable, nonmonetary benefits such as the protection of public
38 health and safety, worker safety, or the environment, the prevention
39 of discrimination, the promotion of fairness or social equity, and

1 the increase in openness and transparency in business and
2 government, among other things.

3 (2) For a major regulation proposed on or after January 1, 2013,
4 the standardized regulatory impact analysis required by Section
5 11346.3.

6 (3) An identification of each technical, theoretical, and empirical
7 study, report, or similar document, if any, upon which the agency
8 relies in proposing the adoption, amendment, or repeal of a
9 regulation.

10 (4) Where the adoption or amendment of a regulation would
11 mandate the use of specific technologies or equipment, a statement
12 of the reasons why the agency believes these mandates or
13 prescriptive standards are required.

14 (5) (A) A description of reasonable alternatives to the regulation
15 and the agency's reasons for rejecting those alternatives.
16 Reasonable alternatives to be considered include, but are not
17 limited to, alternatives that are proposed as less burdensome and
18 equally effective in achieving the purposes of the regulation in a
19 manner that ensures full compliance with the authorizing statute
20 or other law being implemented or made specific by the proposed
21 regulation. In the case of a regulation that would mandate the use
22 of specific technologies or equipment or prescribe specific actions
23 or procedures, the imposition of performance standards shall be
24 considered as an alternative.

25 (B) A description of reasonable alternatives to the regulation
26 that would lessen any adverse impact on small business and the
27 agency's reasons for rejecting those alternatives. Alternatives *may*
28 include, but are not limited to, phasing of implementation to take
29 into account the compliance capacity and resources of small
30 business, performance standards to provide compliance flexibility
31 for small business, simplification of reporting and compliance
32 standards, differing ~~requirements~~ *compliance methods* for small
33 and large businesses, and partial or total exemptions based on the
34 firm's actual degree of activity within the regulated activity.
35 *Alternative approaches to regulatory compliance shall meet the*
36 *same regulatory objectives.*

37 (C) Notwithstanding subparagraph (A) or (B), an agency is not
38 required to artificially construct alternatives. The agency shall list
39 any alternative that was submitted to the agency by the public and

1 the Office of the Small Business Advocate and determined to be
2 unreasonable.

3 (6) Facts, evidence, documents, testimony, or other evidence
4 on which the agency relies to support an initial determination that
5 the action will not have a significant adverse economic impact on
6 business.

7 (7) A department, board, or commission within the
8 Environmental Protection Agency, the Natural Resources Agency,
9 or the Office of the State Fire Marshal shall describe its efforts, in
10 connection with a proposed rulemaking action, to avoid
11 unnecessary duplication or conflicts with federal regulations
12 contained in the Code of Federal Regulations addressing the same
13 issues. These agencies may adopt regulations different from federal
14 regulations contained in the Code of Federal Regulations
15 addressing the same issues upon a finding of one or more of the
16 following justifications:

17 (A) The differing state regulations are authorized by law.

18 (B) The cost of differing state regulations is justified by the
19 benefit to human health, public safety, public welfare, or the
20 environment.

21 (8) Each state agency shall assess whether there is a similar or
22 related *state* regulation that has been adopted ~~by another state~~
23 ~~regulatory entity~~ and determine whether there are opportunities to
24 coordinate and harmonize compliance activities in order to reduce
25 the cost and regulatory burden on ~~firms and individuals~~ *small*
26 *businesses. In assessing and potentially developing coordinated*
27 *and harmonized approaches to regulatory compliance, the state*
28 *agency shall ensure that the compliance method can result in full*
29 *compliance with the authorizing statute or other law being*
30 *implemented or made specific by the proposed regulation.*

31 (c) A state agency that adopts or amends a regulation mandated
32 by federal law or regulations, the provisions of which are identical
33 to a previously adopted or amended federal regulation, shall be
34 deemed to have complied with subdivision (b) if a statement to
35 the effect that a federally mandated regulation or amendment to a
36 regulation is being proposed, together with a citation to where an
37 explanation of the provisions of the regulation can be found, is
38 included in the notice of proposed adoption or amendment prepared
39 pursuant to Section 11346.5. However, the agency shall comply
40 fully with this chapter with respect to any provisions in the

1 regulation that the agency proposes to adopt or amend that are
2 different from the corresponding provisions of the federal
3 regulation.

4 (d) This section shall become operative on January 1, 2012.

5 (e) This section shall remain in effect only until January 1, 2014,
6 and as of that date is repealed, unless a later enacted statute, that
7 is enacted before January 1, 2014, deletes or extends that date.

8 SEC. 3. Section 11346.2 of the Government Code, as amended
9 by Section 3 of Chapter 496 of the Statutes of 2011, is amended
10 to read:

11 11346.2. Every agency subject to this chapter shall prepare,
12 submit to the office with the notice of the proposed action as
13 described in Section 11346.5, and make available to the public
14 upon request, all of the following:

15 (a) A copy of the express terms of the proposed regulation.

16 (1) The agency shall draft the regulation in plain, straightforward
17 language, avoiding technical terms as much as possible, and using
18 a coherent and easily readable style. The agency shall draft the
19 regulation in plain English.

20 (2) The agency shall include a notation following the express
21 terms of each California Code of Regulations section, listing the
22 specific statutes or other provisions of law authorizing the adoption
23 of the regulation and listing the specific statutes or other provisions
24 of law being implemented, interpreted, or made specific by that
25 section in the California Code of Regulations.

26 (3) The agency shall use underline or italics to indicate additions
27 to, and strikeout to indicate deletions from, the California Code
28 of Regulations.

29 (b) An initial statement of reasons for proposing the adoption,
30 amendment, or repeal of a regulation. This statement of reasons
31 shall include, but not be limited to, all of the following:

32 (1) A statement of the specific purpose of each adoption,
33 amendment, or repeal, the problem the agency intends to address,
34 and the rationale for the determination by the agency that each
35 adoption, amendment, or repeal is reasonably necessary to carry
36 out the purpose and address the problem for which it is proposed.
37 The statement shall enumerate the benefits anticipated from the
38 regulatory action, including the benefits or goals provided in the
39 authorizing statute. These benefits may include, to the extent
40 applicable, nonmonetary benefits such as the protection of public

1 health and safety, worker safety, or the environment, the prevention
2 of discrimination, the promotion of fairness or social equity, and
3 the increase in openness and transparency in business and
4 government, among other things. Where the adoption or
5 amendment of a regulation would mandate the use of specific
6 technologies or equipment, a statement of the reasons why the
7 agency believes these mandates or prescriptive standards are
8 required.

9 (2) For a major regulation proposed on or after November 1,
10 2013, the standardized regulatory impact analysis required by
11 Section 11346.3.

12 (3) An identification of each technical, theoretical, and empirical
13 study, report, or similar document, if any, upon which the agency
14 relies in proposing the adoption, amendment, or repeal of a
15 regulation.

16 (4) (A) A description of reasonable alternatives to the regulation
17 and the agency's reasons for rejecting those alternatives.
18 Reasonable alternatives to be considered include, but are not
19 limited to, alternatives that are proposed as less burdensome and
20 equally effective in achieving the purposes of the regulation in a
21 manner that ensures full compliance with the authorizing statute
22 or other law being implemented or made specific by the proposed
23 regulation. In the case of a regulation that would mandate the use
24 of specific technologies or equipment or prescribe specific actions
25 or procedures, the imposition of performance standards shall be
26 considered as an alternative.

27 (B) A description of reasonable alternatives to the regulation
28 that would lessen any adverse impact on small business and the
29 agency's reasons for rejecting those alternatives. Alternatives *may*
30 include, but are not limited to, phasing of implementation to take
31 into account the compliance capacity and resources of small
32 business, performance standards to provide compliance flexibility
33 for small business, simplification of reporting and compliance
34 standards, ~~differing requirements~~ *compliance methods* for small
35 and large businesses, and partial or total exemptions based on the
36 firm's actual degree of activity within the regulated activity.
37 *Alternative approaches to regulatory compliance shall meet the*
38 *same regulatory objectives.*

39 (C) Notwithstanding subparagraph (A) or (B), an agency is not
40 required to artificially construct alternatives. The agency shall list

1 any alternative that was submitted to the agency by the public and
2 the Office of the Small Business Advocate and determined to be
3 unreasonable.

4 (5) Facts, evidence, documents, testimony, or other evidence
5 on which the agency relies to support an initial determination that
6 the action will not have a significant adverse economic impact on
7 business.

8 (6) A department, board, or commission within the
9 Environmental Protection Agency, the Natural Resources Agency,
10 or the Office of the State Fire Marshal shall describe its efforts, in
11 connection with a proposed rulemaking action, to avoid
12 unnecessary duplication or conflicts with federal regulations
13 contained in the Code of Federal Regulations addressing the same
14 issues. These agencies may adopt regulations different from federal
15 regulations contained in the Code of Federal Regulations
16 addressing the same issues upon a finding of one or more of the
17 following justifications:

18 (A) The differing state regulations are authorized by law.

19 (B) The cost of differing state regulations is justified by the
20 benefit to human health, public safety, public welfare, or the
21 environment.

22 (7) Each state agency shall assess whether there is a similar or
23 related *state* regulation that has been adopted ~~by another state~~
24 ~~regulatory entity~~ and determine whether there are opportunities to
25 coordinate and harmonize compliance activities in order to reduce
26 the cost and regulatory burden ~~on firms and individuals~~. *small*
27 *businesses. In assessing and potentially developing coordinated*
28 *and harmonized approaches to regulatory compliance, the state*
29 *agency shall ensure that the compliance method can result in full*
30 *compliance with the authorizing statute or other law being*
31 *implemented or made specific by the proposed regulation.*

32 (c) A state agency that adopts or amends a regulation mandated
33 by federal law or regulations, the provisions of which are identical
34 to a previously adopted or amended federal regulation, shall be
35 deemed to have complied with subdivision (b) if a statement to
36 the effect that a federally mandated regulation or amendment to a
37 regulation is being proposed, together with a citation to where an
38 explanation of the provisions of the regulation can be found, is
39 included in the notice of proposed adoption or amendment prepared
40 pursuant to Section 11346.5. However, the agency shall comply

1 fully with this chapter with respect to any provisions in the
2 regulation that the agency proposes to adopt or amend that are
3 different from the corresponding provisions of the federal
4 regulation.

5 (d) This section shall be inoperative from January 1, 2012, until
6 January 1, 2014.

7 SEC. 4. Section 11346.23 is added to the Government Code,
8 to read:

9 11346.23. The Department of General Services shall provide
10 in the State Administrative Manual guidance on procedures that
11 do both of the following:

12 (a) Facilitate the periodic review of existing significant
13 regulations *by the rulemaking entity* to determine whether a
14 regulation has become, or parts of the regulation have become,
15 outmoded, ineffective, insufficient, or excessively burdensome,
16 and to modify, streamline, expand, or repeal them in accordance
17 with what has been learned. The intent of providing guidance on
18 such retrospective analyses is to ensure that a regulation has not
19 resulted in unintended consequences that could create unexpected
20 harm, that a new technology has emerged making the existing
21 regulation obsolete *or less effective*, or that a fundamental change
22 in the economy creates an unforeseen regulatory burden. *Reviews*
23 *shall be undertaken in a cost-effective manner that reflects a*
24 *government entity's staffing, funding, purpose, and legal authority.*

25 (b) Facilitate the orderly implementation of new and modified
26 regulations, including, but not limited to, limiting the
27 implementation date of new and modified regulations that require
28 compliance by private firms to two standardized dates, except in
29 circumstances where there is evidence that delaying
30 implementation could result in significant harm to the public.

31 SEC. 5. Section 12098.3 of the Government Code is amended
32 to read:

33 12098.3. (a) The Director of the Office of Small Business
34 Advocate shall be appointed by, and shall serve at the pleasure of,
35 the Governor.

36 (b) The Governor shall appoint the employees who are needed
37 to accomplish the purposes of this article.

38 (c) The duties and functions of the advocate shall include all of
39 the following:

1 (1) Serve as the principal advocate in the state on behalf of small
2 businesses, including, but not limited to, advisory participation in
3 the consideration of all legislation and administrative regulations
4 that affect small businesses, and advocacy on state policy and
5 programs related to small businesses on disaster preparedness and
6 recovery including providing technical assistance.

7 (2) Represent the views and interests of small businesses before
8 other state agencies whose policies and activities may affect small
9 business, including, but not limited to, commenting on and
10 gathering input from small businesses, and making suggestions
11 on reasonable alternatives to proposed and existing regulations.

12 (3) Enlist the cooperation and assistance of public and private
13 agencies, businesses, and other organizations in disseminating
14 information about the programs and services provided by state
15 government that are of benefit to small businesses, and information
16 on how small businesses can participate in, or make use of, those
17 programs and services.

18 (4) Consult with experts and authorities in the fields of small
19 business investment, venture capital investment, and commercial
20 banking and other comparable financial institutions involved in
21 the financing of business, and with individuals with regulatory,
22 legal, economic, or financial expertise, including members of the
23 academic community, and individuals who generally represent the
24 public interest.

25 (5) Seek the assistance and cooperation of all state agencies and
26 departments providing services to, or affecting, small business,
27 including the small business liaison designated pursuant to Section
28 14846, to ensure coordination of state efforts.

29 (6) Receive and respond to complaints from small businesses
30 concerning the actions of state agencies and the operative effects
31 of state laws and regulations adversely affecting those businesses.

32 (7) Counsel small businesses on how to resolve questions and
33 problems concerning the relationship of small business to state
34 government.

35 (8) Maintain, publicize, and distribute an annual list of persons
36 serving as small business ombudsmen throughout state government.

37 (9) Consult with the Department of Transportation in the
38 development and administration of the Small and Emerging
39 Contractor Technical Assistance Program established pursuant to

- 1 Article 2.6 (commencing with Section 14137) of Chapter 2 of Part
- 2 5.

O